

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN RESTITUTION MONEY PAID BY A CRIMINAL OFFENDER MUST BE PAID INTO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; CREATING THE ACCOUNT; STATUTORILY APPROPRIATING THE MONEY IN THE ACCOUNT; AND AMENDING SECTIONS 17-7-502, 46-18-236, 46-18-241, 46-18-250, 46-18-251, 53-1-107, 53-9-104, 53-9-132, AND 53-30-132, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Account for crime victims compensation.** There is an account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice for the purposes provided in this part.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;

1 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612;
2 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623;
3 53-1-109; 53-6-703; section 1; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214;
4 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and
5 90-9-306.

6 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
7 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
8 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
9 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
10 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
11 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
12 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
13 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
14 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
15 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion
16 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.
17 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,
18 the inclusion of 2-15-151 terminates June 30, 2005.)"

19
20 **Section 3.** Section 46-18-236, MCA, is amended to read:

21 **"46-18-236. Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as
22 provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon
23 conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in
24 addition to other taxable court costs, fees, or fines, as follows:

25 (a) \$15 for each misdemeanor charge;

26 (b) the greater of \$20 or 10% of the fine levied for each felony charge; and

27 (c) an additional \$25 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

28 (2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay
29 the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment
30 of the charge imposed by this section.

1 (3) The charges imposed by this section are not fines and must be imposed in addition to any fine and
2 may not be used in determining the jurisdiction of any court.

3 (4) When the payment of a fine is to be made in installments over a period of time, the charges imposed
4 by this section must be collected from the first payment made and each subsequent payment as necessary if
5 the first payment is not sufficient to cover the charges.

6 (5) The charges collected under subsection (1), except those collected under subsections (1)(a) and
7 (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer.
8 If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under
9 subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's
10 court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the
11 county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county
12 government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be
13 deposited with the finance officer or treasurer of the consolidated government.

14 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections
15 (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of
16 salaries of the city or town attorney and deputies.

17 (b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a)
18 and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The
19 county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys
20 and for the payment of other salaries in the office of the county attorney, and any funds not needed for those
21 salaries may be used for the payment of any other county salaries.

22 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer
23 may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness
24 advocate program, including a program operated by a private, nonprofit organization, that provides the services
25 specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or
26 town.

27 (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge
28 collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by
29 the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to
30 allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1~~ account provided for in [section 1]."

Section 4. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid and is a condition of any probation or parole.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid as provided in 46-18-251(3)(b). The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid as provided in 46-18-251(3)(b).

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during

1 the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate
2 of the hours of community service times the state minimum wage in effect at the time that the community service
3 is performed."

4
5 **Section 5.** Section 46-18-250, MCA, is amended to read:

6 **"46-18-250. Victim's location unknown -- payments to restitution fund -- use of restitution fund.**

7 (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that
8 restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund.
9 Subject to the availability of money in the fund, if the location of a victim whose restitution payments were
10 deposited in the county restitution fund becomes known, the county shall refund to the victim payments that were
11 deposited in the fund.

12 (2) Money in the restitution fund may be used to provide payments on behalf of offenders who are
13 ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or
14 are unable to obtain employment sufficient to make restitution payments and sustain themselves and their
15 dependents. The offender may perform community service, and for each hour of community service performed,
16 the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge
17 may order an offender to perform community service work for restitution payments upon a finding that the
18 offender would not otherwise be able to make restitution payments and that there are funds available in the
19 county restitution fund for payments to the victim.

20 (3) Money in the county restitution fund that is due to a victim under this part must be paid to the crime
21 victims compensation and assistance program in the department of justice for deposit in the ~~state general fund~~
22 account provided for in [section 1] if payments have been made to or on behalf of the victim from the state.
23 Payment from the county restitution fund to the crime victims compensation and assistance program in the
24 department of justice for deposit in the ~~state general fund~~ account provided for in [section 1] may be made only
25 from money paid by the offender who caused the injury or death that resulted in the payment from the account."

26
27 **Section 6.** Section 46-18-251, MCA, is amended to read:

28 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) Except as provided in
29 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution, charges, or other
30 payments arising out of the same criminal proceeding, money collected from the offender must be allocated as

provided in this section.

(2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 4~~ account provided for in [section 1];

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Section 7. Section 53-1-107, MCA, is amended to read:

"53-1-107. Inmate financial transactions and trust account system. (1) An inmate of a state prison, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. The department may charge an inmate a minimum fee, not to exceed \$2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion

1 of the funds in an inmate's account to:

- 2 (a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;
3 (b) satisfy court-ordered child support;
4 (c) satisfy court-ordered fines, fees, or costs;
5 (d) pay for the inmate's medical and dental expenses and costs of incarceration; and
6 (e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state
7 prison and pay reasonable claims by a debt collection or financial institution.

8 (3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following
9 order:

- 10 (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
11 (ii) to the crime victims compensation and assistance program in the department of justice for deposit
12 in the ~~state general fund~~ account provided for in [section 1] until the state is fully reimbursed for compensation
13 to the victim provided pursuant to Title 53, chapter 9, part 1;

- 14 (iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and
15 (iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

16 (b) If there is a balance of money in the inmate's account after payments under subsection (2), the
17 department may allow the balance to accumulate in a savings subaccount for the inmate.

18 (4) The department shall adopt rules establishing the prison inmate trust account system and criteria
19 for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that
20 ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts
21 within or outside the state prison.

22 (5) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the
23 department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The
24 department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and
25 use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from
26 sources outside the state prison that is not deposited in the account provided for in subsection (1)."

27
28 **Section 8.** Section 53-9-104, MCA, is amended to read:

29 **"53-9-104. Powers and duties of office.** (1) The office shall:

- 30 (a) adopt rules to implement this part;

1 (b) prescribe forms for applications for compensation;

2 (c) determine all matters relating to claims for compensation; and

3 (d) require any person contracting directly or indirectly with an individual formally charged with or
4 convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television
5 production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the
6 terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any
7 dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that
8 the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited
9 proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged
10 person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all
11 kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased
12 victims, and the state for any public defender or any attorney appointed for the charged person must be
13 deposited in the ~~state general fund~~ account provided for in [section 1].

14 (2) The office may:

15 (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data
16 to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute
17 providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

18 (b) request and obtain from a health care provider medical reports that are relevant to the physical
19 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information
20 that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the
21 claimant a release of the records or information. No civil or criminal liability arises from the release of information
22 requested under this subsection (2)(b).

23 (c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct
24 hearings, and receive relevant, nonprivileged evidence;

25 (d) take notice of judicially cognizable facts and general, technical, and scientific facts within its
26 specialized knowledge;

27 (e) require that law enforcement agencies and officials take reasonable care that victims be informed
28 about the existence of this part and the procedure for applying for compensation under this part; and

29 (f) establish a victims assistance coordinating and planning program."
30

1 **Section 9.** Section 53-9-132, MCA, is amended to read:

2 **"53-9-132. Subrogation.** (1) If a claimant seeks compensation under this part and compensation is
3 awarded, the office is entitled to full subrogation against a judgment or recovery received by the claimant against
4 the offender or a collateral source arising from the criminally injurious conduct committed by the offender for all
5 compensation paid under this part. The office's right of subrogation is a first lien on the judgment or recovery.
6 If the claimant does not institute the action against the offender or collateral source within 1 year from the date
7 the criminally injurious conduct occurred, the office may institute the action in the name of the claimant or the
8 claimant's personal representative. Recovered subrogated sums must be paid to the crime victims compensation
9 and assistance program in the department of justice for deposit in the account provided for in [section 1].

10 (2) If the claimant institutes the action, the office shall pay a proportional share of costs and attorney
11 fees if it recovers under its subrogation interest.

12 (3) If the office institutes the action in the name of the claimant or the claimant's personal representative
13 and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the
14 office in pursuit of the action, the excess must be paid to the claimant.

15 (4) If a judgment or recovery includes both damages for bodily injury or death for which the office has
16 paid compensation under this part and damages for which the office has not paid compensation, then the office's
17 subrogation interest applies only to that proportion of the judgment or recovery for which it has paid
18 compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on
19 timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various
20 items of damages awarded. A claimant may not make recoveries against the offender or collateral source in
21 such a way as to avoid and preclude the office from receiving its proper subrogation share as provided in this
22 section. The office shall release its lien provided for in subsection (1) upon receipt of its subrogation share."
23

24 **Section 10.** Section 53-30-132, MCA, is amended to read:

25 **"53-30-132. Inmate participation and status in prison work programs -- prison industries and**
26 **vocational training program -- wages and benefits.** (1) The department of corrections may:

27 (a) establish prison industries that will result in the production or manufacture of products and the
28 rendering of services that may be needed by any department or agency of the state or any political subdivision
29 of the state, by any agency of the federal government, by any other states or their political subdivisions, or by
30 nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the gross wages paid to an inmate employed in a federally certified prison industries

1 program, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation
2 of the inmate or, if the obligation has been fully paid or no restitution was ordered, for transfer quarterly to the
3 crime victims compensation and assistance program in the department of justice for deposit in the ~~state general~~
4 ~~fund as provided in Title 53, chapter 9, part 4~~ account provided for in [section 1]; and

5 (p) collect from an inmate employed in a federally certified prison industries program charges for room
6 and board consistent with charges established by the director for inmates assigned to prerelease centers.

7 (2) Except as provided in subsection (3), furniture made in the prison may be purchased by state
8 agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made
9 furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale
10 to international markets.

11 (3) Any state institution, facility, or program operated by the department of corrections may purchase
12 prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

13 (4) While engaged in on-the-job training and production, inmates not employed in a federally certified
14 prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a
15 federally certified prison industries program must be paid as provided in subsection (5).

16 (5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based
17 on the following criteria:

- 18 (i) knowledge and skill;
- 19 (ii) attitude toward authority;
- 20 (iii) physical effort;
- 21 (iv) responsibility for equipment and materials; and
- 22 (v) regard for safety of others.

23 (b) The maximum rate of pay must be determined by the appropriation established for the program,
24 except that an inmate employed in a federally certified prison industries program must be paid at a rate not less
25 than the rate paid for similar work in the locality where the inmate performs the work.

26 (6) Premiums for workers' compensation and occupational disease coverage for federally certified
27 prison industries programs must be paid by the prison industries program or by the department of corrections.
28 If the department of corrections pays the premium, reimbursement for premium payments for workers'
29 compensation and occupational disease coverage must be made to the department of corrections by the private
30 company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 1].

- END -